

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 16TH JANUARY 2007 / 26TH PAUSHA 1928

OP.No. 15656 of 2002(L)

PETITIONERS:

- 1. IBRAHIM, S/O. ABDU, PONNAMPADIKKAL
SREENARAYANAPURAM VILLAGE, SANTHIPURAM DESOM,
KODUNGALLUR TALUK, THIRSSUR DISTRICT.**
- 2. ABDUL KHARIM, S/O. ABDU,
PONNAMPADIKKAL, SREENARAYANAPURAM VILLAGE,
SANTHIPURAM DESOM, KODUNGALLUR TALUK,
THRISSUR DISTRICT.**

BY ADV. SRI.DINESH MATHEW J.MURICKEN

RESPONDENTS:

- 1. STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. DISTRICT COLLECTOR, THRISSUR.**
- 3. THE TAHSILDAR, KODUNGALLUR.**

BY GOVERNMENT PLEADER SRI.C.K.GOVINDAN

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 16/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

ORDER ON CMP. NO.26456/2002 IN OP. NO.15656/2002

DISMISSED

16.1.2007

SD/- K.BALAKRISHNAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PLAN APPROVED BY THE KODUNGALLUR MUNICIPALITY.

EXT.P2:- COPY OF THE ASSESSMENT ORDER PASSED BY THE 3RD RESPONDENT.

EXT.P3:- COPY OF THE ORDER DT. 19.4.02 PASSED BY THE 2ND RESPONDENT.

/TRUE COPY/

tss

K.BALAKRISHNAN NAIR, J.

O.P.NO.15656 of 2002-L

Dated this the 16th day of January, 2007

JUDGMENT

The petitioners have constructed a commercial complex in the Kodungallur Taluk. The building consists of two separate structures and through the middle of the structures there was a passage leading to the car parking area behind the building. Whether the passage could be treated as part of the plinth area of the building is the point that arises for consideration in this case. The contention of the petitioners has been rejected by the Tahsildar, the appellate authority as well as the revisional authority. This original petition is filed challenging Ext.P2 order of assessment and Ext.P3 order of revision. According to the petitioners, the passage cannot be treated as plinth area.

2. The third respondent has filed a counter affidavit supporting the impugned order.

3. Heard the learned counsel on both sides. The plinth area defined in Section 2 (k) of the Kerala Building Tax Act reads as follows:

Sec.2 (k) 'plinth area" means the area included in the floor of a building and where a building has more than one floor the aggregate area included in all the floors together:

Provided that in the case of a building referred to in the Explanation 2 to clause (e), the plinth area shall be calculated separately.

Floor is not defined in Sec.2 of the Act. But, in the Kerala Building Rules, 1984 floor is defined as follows:

Floor means the lower surface in a storey on which one normally walks in a building. The general term, floor unless otherwise specifically mentioned shall not refer to a "mezzanine floor".

4. Going by the concept of floor and plinth area, I feel that the passage will form part of the plinth area of the building. Further, looking at the structure of the building this passage is used as entrance to shop rooms on both sides of it. It is necessary for the convenient use of the building also. So, the contention of the petitioners that the passage should not be treated as part of the plinth area of the building cannot be accepted.

In the result, the Original Petition fails, and it is dismissed.

K.BALAKRISHNAN NAIR,JUDGE.

MS

K.BALAKRISHNAN NAIR, J.

O.P. No.15656 of 2002-L

J U D G M E N T

DATED 16th JANUARY,2007
